

[2023]GRC058

IN THE ROYAL COURT OF GUERNSEY

**Appeal against conviction in the Magistrate’s Court under the provisions of the
Magistrate’s Court (Criminal Appeals) (Guernsey) Law,1988, as amended.**

Between:

CRAIG LE SAUVAGE

Appellant (“A”)

v

THE LAW OFFICERS OF THE CROWN

Respondents (“R”)

Appeal heard on: 30th October, 2023

Before: John Russell Finch, Esq., OBE, Lieutenant-Bailiff

A was not legally represented.

R was represented by Advocate J D McVeigh

JUDGMENT

Introduction

1. A was convicted by the Magistrate’s Court (Judge G.D McKerrell) on 21st April, 2023 of two counts of assault on his partner, at different venues, but on the same day, 19th September, 2022. A was represented by Advocate S. J. Maindonald, and there was a fully-contested hearing with the Complainant and A as the only “live” witnesses. Following conviction, and since the lodging of the appeal against the convictions, A is no longer legally represented. The Notice of Appeal contains the grounds “*The assault didn’t happen [she] is perverting the cause (sic) of justice. Unsafe conviction, no evidence*”.

Background

2. This was a short case and there were no legal issues. The decision was one on the facts. The Judge gave a full judgment and concluded (at page 58-B of the transcript) that the Complainant “*has not pulled the wool over my eyes and has basically told the truth*”. Also, in respect of the first charge “*I can certainly say that with confidence, in respect of the incident.....because what the Prosecution alleges is what can be seen to happen*”. This matter occurred on licensed premises and there was CCTV evidence. This was however, “*very much in the nature of a technical assault*”, namely “*visibly poking and prodding her*”. The second matter, which took

place later was after the two protagonists got into A's car to go to A's father's house. The Complainant wanted to stay in the car, but stated that A grabbed her, pulled her out of the car and then pulled her across a short part of the drive, grabbing her by the arm. However, that came to an end when she got back in the car. It was suggested at the trial that the Complainant was trying to set A up, and later (in prison) being bored she sought attention by pursuing her complaint. Judge McKerrell referred to this at page 57-F of the transcript.

3. In respect of the later incident, the Judge concluded (at page 58-F of the transcript) that on the evidence "*I found [her] to be truthful and the Defendant not be*". As is usual in contested trials, the Judge directed himself fully on the criminal standard of proof and that the two charges had to be considered separately (pages 56-H to 57-A of the transcript). He then gave a commendably full outline of the principal facts in the case. In the end, non-immediate custodial sentences were imposed at the subsequent sentencing. The Social Enquiry Report at paragraph 3 refers to A's still denying the offences, stating that the Complainant has "*stitched [him] up*", due to "*mental issues*". That was essentially his position at this appeal hearing.

Merit

4. In considering whether, as a single Judge of the Court of Appeal, to grant leave to a person to go to the Court of Appeal, when his appeal to the Royal Court from a decision of the Magistrate's Court had been dismissed, the Bailiff emphasised the difficulty in seeking to set aside the decision at first instance, when it concerned an evaluation of the facts and an assessment of the witnesses (Browning v Law Officers, 29 June, 2023). Amongst other observations he stated (at paragraph 8):

"The usual approach taken to an appeal advanced on the basis of the conviction cannot be supported having regard to the evidence recognises that the verdict can only be set aside if it is "obviously and palpably wrong."

He added (at paragraph 11):

"Ultimately, this was a case of evaluating the competing accounts of what took place, and it was open to the Judge to accept the evidence of the Complainant. It cannot be said that there was no evidence supporting that verdict."

And later on in that paragraph:

"I am also not persuaded that it is argued that the verdict was unreasonable because there is a sound, rational basis for the decision made."

5. In that appeal with what the Bailiff was concerned I said in my Royal Court judgment (26 April, 2023) in paragraph 8, that when a court has seen and assessed witnesses and arrived at findings on the facts, an appeal court can only interfere if a conclusion had been reached that no reasonable tribunal could have come to. It was the function of the trial court to find the facts. The appellate court does not hear evidence (except in extremely limited cases, not applicable here). As the Bailiff said, the decision has to be "*obviously and palpably wrong*".
6. That is the problem A faces in the present case. It is not a re-trial and evidence is not received. As the Judge in the Magistrate's Court saw and assessed the witnesses and came to a conclusion on whether they were truthful or not, his conclusions cannot be considered susceptible to challenge, unless plainly wrong. There was evidence before the Magistrate's Court that entitled the Judge to make the decision he did, and this decision was reasoned, as well as applying familiar legal principles correctly. The Royal Court cannot interfere with his conclusions based, as they were, on findings he was entitled to come to, and which were wholly rational.

Appeal Dismissed

**J R Finch OBE,
Lieutenant-Bailiff**

21st November, 2023